shares of Rock County Bancorp, Janesville, Wisconsin.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28546 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Frank Kiang, et al.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Frank or Rosaline Kiang*, Oakland, California; to acquire 24.9 percent of the voting shares of Met Financial Corporation, Oakland, California, and thereby indirectly acquire Metropolitan National Bank, Oakland, California.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28545 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale; Application to Deal in Foreign Currency Options as a Specialist

Societe Generale, Paris, France ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through Societe Generale Options-North America, Inc., Philadelphia, Pennsylvania ("Company"), in the activity of dealing as the specialist in Deutsche mark options and Japanese yen options traded on the Philadelphia Stock Exchange during the Exchange's day trading session.

Applicant states that the proposed activities consist of three basic functions:

(1) To use reasonable efforts to make a "fair and orderly" market in Deutsche mark and Japanese yen option and to engage, to a reasonable degree under existing circumstances, in dealings for its own account when a lack of price continuity or temporary supply/demand disparities exist;

(2) To collate and publish the best bids/offers for Deutsche mark and Japanese yen options; and

(3) To act as agent for orders in Deutsche mark and Japanese yen options, in particular for "limit orders" that are left on the specialists' "books."

The Board has not previously determined that the proposed activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant contends that the proposed activity is functionally equivalent to foreign exchange activities in which banks widely engage. Applicant also states that several banks have been permitted to engage in the proposed activity of acting as specialist in foreign currency options on the Philadelphia Stock Exchange.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Applicant contends that the proposed activity would result in public benefits by stimulating the development and liquidity of the options market which would aid banks generally in reducing their foreign exchange risk exposure. Applicant argues that the proposed activity would not result in adverse effects because they are not predominantly speculative. Rather, Company will generate revenues from its bid/ask spreads, on a carefully hedged basis, in a closely regulated environment.

In 1985, the Board denied an application by Compagnie Financiere de Suez and Banque Indosuez to act as a specialist in French franc options on the Philadelphia Stock Exchange due to the potential adverse effects that might stem from the proposal. 72 Federal Reserve Bulletin 141 (1968). Applicant contends that its proposal is distinguishable from the above case in light of its experience in the proposed activities gained in trading on overseas markets as well as changes in the domestic foreign currency options market since the Board's decision.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 6, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR § 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28549 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

United Banks of Colorado, Inc.; Applications to Engage de novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-25150) published at page 44123 of the issue for Tuesday, November 1, 1988.

Under the Federal Reserve Bank of Kansas City, the entry for United Banks of Colorado, Inc. is amended to read as follows:

1. United Banks of Colorado, Inc., Denver, Colorado; to engage de novo in data processing activities and employee benefits consulting services through a partnership joint venture between its 4(c)(8)(G) insurance subsidiary, United Banks Insurance Services, Inc., and an unaffiliated company, Thompson and Company Insurance Services, Inc., Pasadena, California, pursuant, respectively, to 12 CFR 225.25 (b)(7) and previous orders of the Board. *Centerre Bancorporation*, 73 Federal Reserve Bulletin 365 (1987); *Norstar Bancorp, Inc.*, 72 Federal Reserve Bulletin 729

(1986); *Bank Vermont Corporation*, 72 Federal Reserve Bulletin 377 (1986); *Norstar Bancorp, Inc.*, 71 Federal Reserve Bulletin 656 (1985). The joint venture will not sell insurance as part of its employee benefits consulting service.

Comments on this application must be received by December 27, 1988.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28548 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

Winter-Park Bancshares, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Winter-Park Bancshares, Inc.*, Exeland, Wisconsin; to engage *de novo* through its subsidiary, Winter Insurance Agency, Winter, Wisconsin, in insurance activities in a town of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Winter, Wisconsin; Park Falls, Wisconsin; Gilman, Wisconsin; and Owen, Wisconsin.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Limited*, Tokyo, Japan; to engage *de novo* through its subsidiary, MBL Futures, Inc., Chicago, Illinois, in acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, and certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account pursuant to § 225.25(b)(18) of the Board's Regulaton Y.

Board of Governors of the Federal Reserve System, December 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-28547 Filed 12-12-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Statements of General Policy or Interpretation Staff Commentary On the Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Publication of staff commentary.

SUMMARY: The Commission staff is issuing its Commentary on the Fair Debt Collection Practices Act that will supersede all previously issued staff interpretations of the Act. The purpose of the Commentary is to clarify and codify these interpretations.

DATE: December 13, 1988.

ADDRESS: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Clarke W. Brinckerhoff, Program Advisor, John F. LeFevre, Program Advisor, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, (202) 326-3208 or (202) 326-3209.

SUPPLEMENTARY INFORMATION: On March 7, 1986, the staff of the Federal Trade Commission ("staff" or "FTC staff") published its proposed Staff Commentary on the Fair Debt Collection Practices Act ("FDCPA") in the **Federal Register** (51 FR 8019). That notice set forth the text of the proposed Commentary, along with (1) the staff's rationale for issuing the Commentary and (2) a list of the principal areas where it varied in appreciable measure from the informal opinions previously offered by the FTC staff. That notice also briefly described the FDCPA, the Commission's role in enforcing the statute, and the FTC's staff's interest in improving the present method of providing advice by making informal staff letters available to the public. It explained that the staff viewed the publication of the Commentary as an opportunity to provide a more comprehensive vehicle for providing staff opinions concerning the FDCPA, and to revise previous advice that the staff had come to believe was inconsistent or inaccurate. Both the notice dated March 7, 1986, and the introduction to the proposed Commentary specified that it does not have the force of a trade regulation rule or formal agency action, and that it is not binding on the Commission or the public.

The notice in the **Federal Register** dated March 7, 1986, stated that the FTC staff would accept public comments on the proposed Commentary to aid in preparation of the final product. Three trade associations, six corporations, the consumer protection division of the offices of three state Attorneys General, one state regulatory agency, one national consumer organization, two local consumer groups, and two law firms responded to this invitation. Although the notice stated the FTC staff was requesting comments until May 6, 1986, all comments were taken into account in preparing the Commentary, even those received after that date.

On July 9, 1986, four months after publication of the proposed Commentary, the President signed into law a bill (Pub. L. 99-3610 repealing former section 803(6)(F), which had exempted "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client." The FTC staff has responded to a large number of inquiries from attorneys seeking its views on how the FDCPA applies to their practices. Therefore, the staff has added comments in appropriate locations to reflect the advice it has provided to attorneys on these issues.

This notice (1) summarizes comments received from the public in response to the FTC staff's 1986 publication of the Fair Debt Collection Practices Act Commentary in "proposed" form, (2) highlights the major areas where the staff revised the Commentary based on those comments or refused to do so, and (3) outlines the major issues added to the Commentary, reflecting written advice which the staff has provided to attorneys following repeal of the

"attorney-at-law collecting a debt" exemption in July 1986.

In this notice, the word "comment" refers to an opinion set forth in the Commentary by the staff, "public commenter" refers to a party that submitted views on the proposed Commentary following its publication in the **Federal Register**, and "public comments" refers to those views.

Principal Revisions To Commentary Based on Public Comments

Generally, the FTC staff found the public comments helpful in preparing the final version of the Commentary, although not all the proposals were adopted. Most of the public comments were aimed at clarifying the staff's intent. The redraft adopted these suggestions where it appeared that they resulted in an appreciable improvement. The overwhelming majority of the revisions the FTC staff made in the Commentary involved only minor changes (adding a word or parenthetical phrase or making some minor editorial change), and were designed to clarify points or to avoid possible unintended inferences. However, besides the addition of comments relating to attorney debt collectors, there were some changes of a substantive nature that were made based on public comments. This section highlights the most significant of the clarifications and revisions that were made based on public comments.

1. Location information (section 804 (1,5))

The FTC staff has made adjustments to two comments to acknowledge that a debt collector who is seeking location information by mail may identify his employer when expressly asked to do so. The staff added parenthetical references to comment #4 to section 804, and to comment #4 to section 807(14), which discusses section 804(1) and (5) under the heading "relation to other sections."

One public commenter pounted out that if the person from whom the locaton information is sought replies by expressly requesting the name of the employer of the individual debt collector who sent the letter,[1] sections 804(1) and 804(5) may appear to place conflicting obligations on the debt collection firm. On the one hand, section 804(1) requires a debt collector employee, in communications seeking location information, to "identify his employer" if "expressly requested." Yet section 804(5) generally prohibits a debt collector from using "any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt."

The FTC staff believes a proper interpretation of the FDCPA is to read section 804(1) as controlling this situation, because it specifically addresses the situation in which an individual expressly requests the name of the debt collection firm. In that case, we believe that the debt collection firm must reveal its identity in order to acquire location information. The comments bearing on this issue have therefore been changed to reflect that position.

2. Contact limited to consumer's attorney (section 805(a))

Public commenters argued forcefully that comment #3, stating that a debt collector could not communicate with a consumer who stated that an attorney would represent him with respect to all *future* debts, would place an unreasonable burden on the debt collector. They reported that the standard operating procedure for many debt collectors is to close the consumer's file once a debt is collected or efforts to collect it cease. Should a second debt from the same consumer be assigned to the debt collector, therefore, the collector might be unaware of the previous file on that debtor and would not know whether the consumer was represented by an attorney with respect to all future debts. These commenters contend that the only way a debt collector could comply with our proposed interpretation would be to check every new debtor file against the closed files to determine whether (1) the collector had ever previously contacted that debtor, (2) the debtor had previously been represented by an attorney, and (2) the debtor had given the collector a blanket notice of legal representation. They suggested instead that, when contacted about a subsequent debt, the consumer should simply inform the debt collector that he is still represented by an attorney and that the debt collector should contact the attorney.

The FTC staff now believes that the portion of comment #3 in the proposed Commentary regarding future representation is simply not supported by the statute, or envisioned by its legislative history. Furthermore, it could easily be the case that the attorney in fact no longer represents the consumer. Accordingly, the staff has modified the second paragraph of comment #3 to section 805(a) to replace the broad reference to "all current and future debts" with the more appropriate "other debts."

3. Consumer consent to third party contacts (section 805(b))

The statement in comment #1 that consumers consent to third party contacts "may be presumed from circumstances" has been deleted. One public commenter expressed concern that this formulation might open the door to overreaching by debt collectors. The deleted phrase was not necessary to the point involved—that consent need not necessarily be in writing—which is better made by providing a clear example of such consent.

4. Lists of debtors (Section 806(3))

One public commenter noted that this section of the proposed Commentary did not completely reflect the FDCPA's reference to sections of the Fair Credit Reporting Act. The description has been amended and a comment has been added to reflect that relationship, in accord with a prior staff opinion on the section and a Commission interpretation on the FCRA.

5. Statement by debt collector of possible action (Section 807(5))

A revision was made to correct the Commentary's inadvertent reference to the *creditor*, rather than to the *debt collector*, in comment #3 to this section. Comment #3 concerns statements by the debt collector about action that is unlikely to be taken in a particular case. Obviously, as several public commenters pointed out, the creditor's knowledge that action is unlikely is not automatically imputed to the debt collector.

6. Documents deceptive as to authorship (Section 807(9))

An appropriate clause has been added to the description and to comment #1, to give a more complete discussion of this section than in the proposed Commentary, which focused only on documents that fraudulently appear to be government documents. One public commenter correctly pointed out that the statute covers a much wider range of deceptive practices as to the source of the document.

7. Letters marked "personal" or "confidential" (Section 808(8))

Comment #3 to this section has been expanded to assert that use of the term "Personal" or "Confidential", as well as

[1] Such a communication would be signed by the individual debt collector, without indicating that the letter is from a debt collection firm.

the word "Telegram" or the like, does not violate this section.

One public commenter stated that debt collectors use designations of this sort to protect the consumer's privacy by attempting to ensure that the envelope is not opened by unauthorized persons, and argued that such terms are essentially part of the letter's address.

The FTC staff agrees that the proposed change is logical. The staff has already recognized that a rigid, literal approach to section 808(8) would lead to absurd results (i.e., taken literally, it would prohibit showing any part of the consumer's address on the envelope). The legislative purpose was to prohibit a debt collector from using symbols or language on envelopes that would reveal that the contents pertain to debt collection—not to totally bar the use of harmless words or symbols on an envelope. Indeed, it was for this reason that comment #3 to this section of the proposed Commentary (in accord with prior informal staff advice) explicitly recognized that the term "Telegram" or similar designation on an envelope does not violate this section.

8. Waiver of venue provision (Section 811)

Numerous public commenters objected to comment #1 to this section, indicating a fear that the staff's interpretation would lead to a flood of waiver provisions hidden in the fine print of consumer credit contracts. Although the FTC staff believes that these parties misread the comment, which clearly stated that any waiver "must be provided to the debt collector," the comment has been expanded to be even more explicit on the point.

Significant Public Comments Not Adopted

There were several areas in which public commenters suggested changes in the Commentary that were not adopted. This section discusses the most significant of those proposals, and sets forth the staff's principal reasons for maintaining its position.

1. Contacts in which the collector does not mention the debt (Sections 803(2), 805(a), 805(c))

Several public commenters contended that the FTC staff's treatment of certain contacts consumers as violations of the FDCPA was incorrect because the contacts did not involve a "communication" under the definition provided in section 803(2), which refers to "conveying of information regarding a debt directly or indirectly to any person." These commenters argued that contacts that do not explicitly refer to the debt are not "communications" and, hence, do not violate any provision where that term is used.

The FTC staff continues to believe that some contacts with consumers can violate section 805(a) or section 805(c) because they at least "indirectly" refer to the debt, even if the obligation isn't specifically mentioned. For example, there is no doubt that a debt collector who has previously contacted a consumer about a debt violates section 805(a) if he calls the consumer at 3 AM and says only only "Hi, this is Joe, I haven't forgotten you"—the words may not refer to the debt, but the consumer will know from previous collection efforts by "Joe" what the call is about. The words "or indirectly" in the definition make it clear that Congress intended a common sense approach to this situation. Furthermore, the word "communication" (or variations thereof) is used six times in section 804, which authorizes the seeking of location information from third parties with the general requirement that the debt will *not* be disclosed to such parties, demonstrating that this term was not intended to be limited throughout the statute to acts that specifically refer to the debt, regardless of the definition set forth in section 803(2).

2. Definition of "location information" (section 803(7))

Public commenters made varying suggestions that would effectively amend the section's definition of "location information"—i.e., "a consumer's place of abode and his telephone number at such place, or his place of employment." One public commenter expressed the view that a debt collector was somehow limited by this language to obtaining only one of the three enumerated items (home address or home phone or work address), while others suggested that we interpret the definition to include a fourth item (work phone). Because no public commenter provided a convincing rationale for its position, and because the FTC staff believes that the definition is clear, both suggestions were declined.

3. Use of "copy of a judgment" in notice (section 807(2)(A))

Some public commenters criticized the staff's statement in comment #3 to section 807(2) that the validation notice provided by a debt collector to comply with section 809(a)(4) may use the phrase "copy of a judgment" even where no judgment exists. Staff had previously advised in informal opinion letters that the use of those words violated section 807(2)(A) because they suggested that a judgment existed when it did not. Because the practical effect of these interpretations was to make verbatim use of the statutory language of section 809(a)(4)) of violation of section 807(2)(A), they were rejected by the leading court decision [2] and by the staff in the proposed Commentary. The FTC staff continues to believe its reasons for revising prior staff opinions (discussed in item 5 of the notice in the Federal Register dated March 7, 1986) are well-founded, and thus it has adhered to that position.

One public commenter suggested that we might also permit the phrase "copy of *the* judgment" as well. Because the phrase used in section 809(a)(4) is "copy of *a* judgment" (emphasis added) and this language led to the staff's current interpretation, the Commentary has not been revised on this point.

4. False allegations of fraud (section 807(7))

Some public commenters contended that the language of this section, which outlaws the "false representation or implication that the consumer committed any crime or other conduct *in order to disgrace the consumer*" (emphasis added) demonstrates that specific intent is essential to a violation. The FTC staff agrees that some element of intent is involved, but believes that an intent to disgrace can be inferred from the nature of the acts the consumer is being accused of—fraud (comment 1) or crime (comment 2). Therefore, the comments on this section have not been changed.

5. Disclosure of debt collection purpose (section 807(11))

Several public commenters questioned the staff's refusal to construe section 807(11) as requiring debt collectors to disclose the purpose of each and every written and oral contact, pointing out that court decisions have gone both ways on the issue. The staff's position, reflected in the Commission's Sixth and Seventh Annual Reports to Congress—that such disclosures need not be made where they are obvious or have already been made—has not changed, and the comments provide no new argument for revising that view.

Other public commenters asked the staff to retract the comment stating that a debt collector may not send a note saying only "please call me right away" to a consumer whom the collector has not previously contacted. They argued that such a note could not violate this

[2] *Blackwell v. Professional Business Services of Georgia, Inc.*, 526 F. Supp. 535, 538–39 (N.D. Ga. 1981).

section because it made no reference to the debt and therefore was not a "communication," as defined in section 803(2). Because the staff believes that (1) the intent of section 807(11) was to require that debt collectors' purposes be known to parties they contact, and (2) the use of the term "communication" in other sections of the FDCPA shows that its construction is not always limited to the definition set forth in section 803(2), this comment was retained.[3]

6. Elements of unfairness (section 808)

Some public commenters criticized comment #2, which concerns general violations of this section of the FDCPA, for construing the term "unfair" in the same way as the Commission has construed it under section 5 of the FTC Act. They argued that the comment would, in effect, repeal some of the subsections of section 808 because the proscribed conduct would not cause the type of injury required, or would not be considered unfair based on a cost/benefit analysis. Because the location of the comment—under section 808 *generally*, as opposed to any of its subsections—makes it clear that the staff did not intend to negate any of the eight types of conduct specified by Congress to be a violation of this provision in subsections (1) through (8), the staff retained this comment.

Other public commenters asked that comment #2 be expanded to state that section 808 does not cover inadvertent acts or any act that was reasonably calculated to collect the debt. Because this comment was meant simply to reflect the FTC staff's view that the Commission's approach to "unfair practices" (as reflected in its treatment of that concept in section 5 of the FTC Act) is applicable in analyzing general violations of section 808, comment #2 has not been substantially revised.

7. Details of validation notices (section 809(a))

Some public commenters objected to the staff's view that section 809(a) imposes no requirements as to form, sequence, location, or type size of the notice (comment 3); to our reasons for reversing prior informal opinions to the contrary (item 10 in the March 7, 1986 notice in the **Federal Register**); and to our view that the notice may be provided orally (comment 5). However, the public commenters provided no new analysis to change the staff's reading of the section. Therefore, the Commentary has not been changed on this point.

[3] See discussion of FDCPA section 804 in item 1 of this section of this notice.

8. Proper forum for suit on an oral contract (section 811(a)(2))

One public commenter suggested deletion of comment 4 to section 811. Section 811(a)(2) clearly states that there are only two districts where suit may be brought by a debt collector on a debt—where the consumer "signed the contract sued upon" and where the consumer "resides at the commencement of the action." The staff decided to retain the comment, which simply notes the obvious fact that if there is only an oral agreement (which by definition can not be "signed"), suit may only be brought where the consumer resides.

9. Miscellaneous requests for added comments.

Some public commentors made a number of suggestions that the FTC staff establish *new* principles in the Commentary.[4] Although not all of the proposals were without merit, the staff believes it is unwise to add major new sections to the final version of the Commentary to address issues that have never been the subject of staff correspondence.

New Comments Based on Recent Staff Letters To Attorneys

The staff has added comments to reflect the large volume of written advice it has provided to attorneys following repeal of the "attorney-at-law" exemption in July 1986.[5] This section synthesizes the conclusions reached in the most significant additions made to the Commentary based on this recent correspondence.

1. Coverage (Sections 803(2, 5, 6), 811)

Attorneys or law firms that engage in traditional debt collection activities (sending dunning letters, making collection calls to consumers) are covered by the FDCPA, but those whose practice is limited to legal activities are not covered.[6] Similarly, filing or service of a complaint or other legal paper (or transmission of a notice that is a legal prerequisite to enforcement of a debt) is not a "communication" covered by the FDCPA, but traditional collection efforts are covered.[7]

A student loan is a "debt" covered by the FDCPA;[8] however, alimony, tort claims, and non-pecuniary obligations are not covered.[9]

A salaried attorney who collects debts on behalf of, and in the name of, his creditor employer,[10] and a state educational agency that collects student loans,[11] are exempt from coverage by the FDCPA.

Debt collectors (including attorney debt collectors) are subject to the venue limitations of the FDCPA.[12]

2. Communications by debt collectors (sections 805(b), 806(3–4))

An attorney debt collector, who represents either (1) a creditor or (2) a debt collector that previously tried to collect an account, may report his collection efforts to the debt collector.[13] An attorney may communicate with a witness in a lawsuit that has been filed.[14]

A debt collector may provide a list of consumers, against whom judgments have been entered, to an investigator in order to locate such individuals.[15] A debt collector may place a public notice required by law as a prerequisite to enforcing the debt.[16]

3. Dispute and verification (section 809)

An attorney debt collector must provide the required validation notice, even if a previous debt collector (or the creditor) has given such notice.[17] A debt collector does not comply with the obligation to verify the debt simply by including proof with the first communication to the consumer.[18]

[4] The principal proposals were that the staff add to the Commentary (1) a lengthy new comment in section 803(6) that a party could be a "debt collector" with respect to some accounts but not others, (2) a definition of "default" in connection with section 803(6)(G)(iii) (now section 803(6)(F)(iii)) concerning accounts not in default when received, (3) a statement that section 806(3) does not prohibit a debt collector from responding to a specific credit reference inquiry from a creditor, (4) substantial new material to various comments in section 807(14) to cover a situation where one debt collector provides services as a contractor for another debt collector, (5) a statement that section 808(1) does not prohibit an agreement between a consumer and debt collector, and (6) a statement that the verification required by section 809(b) may be provided by an agent of the debt collector.

[5] Although most of the issues raised in those letters related to attorneys as debt collectors, a few of them also asked for interpretations on other issues as well. For the sake of completeness, all significant staff opinions included in this correspondence (which has been widely circulated already) have been included in the Commentary.

[6] Section 803(6), comments 1–2.

[7] Section 803(2), comment 2; section 809(a), comments 6–7.

[8] Section 803(5), comment 1.

[9] Section 803(5), comment 2.

[10] Section 803(6)(A), comment 4(a).

[11] Section 803(6)(C), comment 4(c).

[12] Section 811, comment 6.

[13] Section 805(b), comment 8.

[14] Section 805(b), comment 8.

[15] Section 806(3–4), comment 5.

[16] Section 806(3–4), comment 6.

[17] Section 809(a), comment 7.

[18] Section 809(b), comment 1.

An attorney debt collector may take legal action within 30 days of sending the required validation notice, regardless of whether the consumer disputes the debt; if the consumer disputes the debt, the attorney may still take legal action but must cease other collection efforts (*e.g.*, letters or calls to the consumer) until verification is obtained and mailed to the consumer.[19]

4. Permissible forum to enforce a judgment on a debt (section 811)

If a judgment has been obtained from a forum that satisfies the requirements of this section, a debt collector may bring suit to enforce it in another jurisdiction.[20]

By direction of the Commission.

Donald S. Clark,

Secretary.

Federal Trade Commission Staff Commentary on the Fair Debt Collection Practices Act

Introduction

This Commentary is the vehicle by which the staff of the Federal Trade Commission publishes its interpretations of the Fair Debt Collection Practices Act (FDCPA). It is a guideline intended to clarify the staff interpretations of the statute, but does not have the force or effect of statutory provisions. It is not a formal trade regulation rule or advisory opinion of the Commission, and thus is not binding on the Commission or the public.

The Commentary is based primarily on issues discussed in informal staff letters responding to public requests for interpretations and on the Commission's enforcement program, subsequent to the FDCPA's enactment. It is intended to synthesize staff views on important issues and to give clear advice where inconsistencies have been discovered among staff letters. In some cases, reflection on the issues posed or relevant court decisions have resulted in a different interpretation from that expressed by the staff in those informal letters. Therefore, the Commentary supersedes the staff views expressed in such correspondence.

In many cases several different sections or subsections of the FDCPA may apply to a given factual situation. This results from the effort by Congress in drafting the FDCPA to be both explicit and comprehensive, in order to limit the opportunities for debt collectors to evade the underlying legislative intention. Although it may be of only technical interest whether a given act violates one, two, or three sections of the FDCPA, the Commentary frequently provides cross references to other applicable sections so that it may serve as a more comprehensive guide for its users. The Commentary attempts to discuss the more common overlapping references, usually under the heading "Relation to other sections," and deals with issues raised by each factual situation under the section or subsection that the staff deems most directly applicable to it.

The Commentary will be revised and updated by the staff as needed, based on the experience of the Commission in responding to public inquiries about, and enforcing, the FDCPA. The Commission welcomes input from interested industry, consumer, and other public parties on the Commentary and on issues discussed in it.

The staff will continue to respond to requests for informal interpretations. Updates of the Commentary will consider and, where appropriate, incorporate issues raised in correspondence and other public contacts, as well as the Commission's enforcement efforts. Therefore, a party who is interested in raising an issue for inclusion in future editions of the Commentary does not need to make any formal submission or request to that effect.

The Commentary should be used in conjunction with the statute. The abbreviated description of each section or subsection in the Commentary is designed only as a preamble to discussion of issues pertaining to each section and is not intended as a substitute for the statutory text.

The Commentary should not be considered as a reflection of all court rulings under the FDCPA. For example, on some issues judicial interpretations of the statute vary depending on the jurisdiction, with the result that the staff's enforcement position can not be in accord with all decided cases.

Section 801—Short Title

Section 801 names the statute the "Fair Debt Collection Practices Act."

The Fair Debt Collection Practices Act (FDCPA) is Title VIII of the Consumer Credit Protection Act, which also includes other federal statutes relating to consumer credit, such as the Truth in Lending Act (Title I), the Fair Credit Reporting Act (Title VI), and the Equal Credit Opportunity Act (Title VII).

Section 802—Findings and Purpose

Section 802 recites the Congressional findings that serve as the basis for the legislation.

Section 803—Definitions

Section 803(l) defines "Commission" as the Federal Trade Commission.

1. *General.* The definition includes only the Federal Trade Commission, not necessarily the staff acting on its behalf.

Section 803(2) defines "communication" as the "conveying of information regarding a debt directly or indirectly to any person through any medium."

1. *General.* The definition includes oral and written transmission of messages which refer to a debt.

2. *Exclusions.* The term does not include formal legal action (e.g., filing of a lawsuit or other petition/pleadings with a court; service of a complaint or other legal papers in connection with a lawsuit, or activities directly related to such service). Similarly, it does not include a notice that is required by law as a prerequisite to enforcing a contractual obligation between creditor and debtor, by judicial or nonjudicial legal process.

The term does not include situations in which the debt collector does not convey information regarding the debt, such as:

- A request to a third party for a consumer to return a telephone call to the debt collector, if the debt collector does not refer to the debt or the caller's status as (or affiliation with) a debt collector.
- A request to a third party for information about the consumer's assets, if the debt collector does not reveal the existence of a debt.
- A request to a third party in connection with litigation (e.g., requesting a third party to complete a military affidavit that must be filed as a prerequisite to enforcing a default judgment, if the debt collector does not reveal the existence of the debt."

Section 803(3) defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt."

1. *General.* The definition includes only a "natural person" and not an artificial person such as a corporation or other entity created by statute.

Section 803(4) defines "creditor" as "any person who offers or extends credit creating a debt or to whom a debt is owed". However, the definition excludes a party who "receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another."

1. *General.* The definition includes the party that actually extended credit or became the obligee on an account in the normal course of business, and excludes

[19] Section 809(a), comment 8.

[20] Section 811, comment 5.

a party that was assigned a delinquent debt only for collection purposes.

Section 803(5) defines "debt" as a consumer's "obligation . . . to pay money arising out of a transaction in which the money, arising out of a transportation in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes. . . ."

1. *Examples.* The term includes:

• Overdue obligations such as medical bills that were originally payable in full within a certain time period (e.g., 30 days).

• A dishonored check that was tendered in payment for goods or services acquired or used primarily for personal, family, or household purposes.

• A student loan, because the consumer is purchasing "services" (education) for personal use.

2. *Exclusions.* The term does not include:

• Unpaid taxes, fines, alimony, or tort claims, because they are not debts incurred from a "transportation (involving purchase of) property * * * or services * * * for personal, family or household purposes."

• A credit card that a cardholder retains after the card issuer has demanded its return. The cardholder's account balance is the debt.

• A non-pecuniary obligation of the consumer such as the responsibility to maintain adequate insurance on the collateral, because it does not involve an "obligation * * * to pay money."

Section 803(6) defines "debt collector" as a party "who uses any instrumentality of interstate commerce or the mails in * * * collection of * * * debts owed * * * another."

1. *Examples.* The term includes:

• Employees of a debt collection business, including a corporation, partnership, or other entity whose business is the collection of debts owned another.

• A firm that regularly collects overdue rent on behalf of real estate owners, or periodic assessments on behalf of condominium associations, because it "regularly collects * * * debts owned or due another."

• A party based in the United States who collects debts owned by consumers residing outside the United States, because he "uses * * * the mails" in the collection business. The residence of the debtor is irrelevant.

• A firm that collects debts in its own name for a creditor solely by mechanical techniques, such as (1) placing phone calls with pre-recorded messages and recording consumer responses, or (2) making computer-generated mailings.

• An attorney or law firm whose efforts to collect consumer debts on behalf of its clients regularly include activities traditionally associated with debt collection, such as sending demand letters (dunning notices) or making collection telephone calls to the consumer. However, an attorney is not considered to be a debt collector simply because he responds to an inquiry from the consumer following the filing of a lawsuit.

2. *Exclusions.* The term does not include:

• Any person who collects debts (or attempts to do so) only in insolated instances, becuause the definition includes only those who "regularly" collect debts.

• A credit card issuer that collects its cardholder's account, even when the account is based upon purchases from participating merchants, because the issuer is collecting its own debts, not those "owed or due another."

• An attorney whose practice is limied to legal activities (e.g., the filing and prosecution of lawsuits to reduce debts to judgment).

3. *Application of definition to creditor using another name.* Creditors are generally excluded from the definition of "debt collector" to the extent that they collect their own debts in their own name. However, the term specifically applies to "any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is" involved in the collection.

A creditor is a debt collector for purposes of this act if:

• He uses a name other than his own to collect his debts, including a fictitious name.

• His salaried attorney employees who collect debts use stationery that indicates that attorneys are employed by someone other than the creditor or are independent or separate from the creditor (e.g., ABC Corp. sends collection letters on stationery of "John Jones, Attorney-at-Law").

• He regularly collects debts for another creditor; however, he is a debt collector only for purposes of collecting these debts, not when he collects his own debt in his own name.

• The creditor's collection division or related corporate collector is not clearly designated as being affiliated with the creditor; however, the creditor is not a debt collector if the creditor's correspondence is clearly labeled as being from the "collection unit of the (creditor's name)," since the creditor is not using a "name other than his own" in that instance.

Relation to other sections. A creditor who is covered by the FDCPA because he uses a "name other than his own" also may violate section 807(14), which prohibits using a false business name. When he falsely uses an attorney's name, he violates section 807(3).

4. *Specific exemptions from definition of debt collector.*

(a) *Creditor employees.* Section 803(6)(A) provides that "debt collector" does not include "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor".

The exemption includes a collection agency employee, who works for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision, because he has become the *de facto* employee of the creditor.

The exemption includes a creditor's salaried attorney (or other) employee who collects debts on behalf of, and in the name of, that creditor.

The exemption does not include a creditor's former employee who continues to collect accounts on the creditor's behalf, if he acts under his own name rather than the creditors's.

(b) *Creditor-controlled collector.* Section 803(6)(B) provides that "debt collector" does not include a party collecting for another, where they are both "related by common ownership or affiliated by corporate control, if the (party collects) only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts".

The exemption applies where the collector and creditor have "common ownership or * * * corporate control." For example, a company is exempt when it attempts to collect debts of another company after the two entities have merged.

The exemption does not apply to a party related to a creditor if it also collects debts for others in addition to the related creditors.

(c) *State and federal officials.* Section 803(6)(C) provides that "debt collector" does not include any state or federal employee "to the extent that collecting or attempting to collect any debt is in the performance of his official duties".

The exemption applies only to such governmental employees in the performance of their "official duties" and, therefore, does not apply to an attorney employed by a county government who also collected bad checks for local merchants where that activity is outside his official duties.

The exemption includes a state educational agency that is engaged in the collection of student loans.

(d) *Process servers.* Section 803(6)(D) provides that "debt collector" dos not include "any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt".

The exemption covers marshals, sheriffs, and any other process servers while conducting their normal duties relating to serving legal papers.

(e) *Non-profit counselors.* Section 803(6)(E) provides that "debt collector" does not include "any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors".

This exemption applies only to non-profit organizations; it does not apply to for-profit credit counseling services that accept fees from debtors and regularly transmit such funds to creditors.

(f) *Miscellaneous.* Section 803(6)(F) provides that "debt collector" does not include collection activity by a party about a debt that "(i) is incidental to a bona fide fiduciary obligation or * * * escrow arrangement; (ii) * * * was originated by such person; (iii) * * * was not in default at the time it was obtained by such person; or (iv) (was) obtained by such person as a secured party in a commercial credit transaction involving the creditor."

The exemption (i) for bona fide fiduciary obligations or escrow arrangements applies to entities such as trust departments of banks, and escrow companies. It does not include a party who is named as a debtor's trustee solely for the purpose of conducting a foreclosure sale (i.e., exercising a power of sale in the event of default on a loan).

The exemption (ii) for a party that originated the debt applies to the original creditor collecting his own debts in his own name. It also applies when a creditor assigns a debt originally owed to him, but retains the authority to collect the obligation on behalf of the assignee to whom the debt becomes owed. For example, the exemption applies to a creditor who makes a mortgage or school loan and continues to handle the account after assigning it to a third party. However, it does not apply to a party that takes assignment of retail installment contracts from the original creditor and then reassigns them to another creditor but continues to collect the debt arising from the contracts, because the debt was not "originated by" the collector/first assignee.

The exception (iii) for debts not in default when obtained applies to parties such as mortgage service companies whose business is servicing current accounts.

The exemption (iv) for a secured party in a commercial transaction applies to a commercial lender who acquires a consumer account that was used as collateral, following default on a loan from the commercial lender to the original creditor.

(g) *Attorneys.* A provision of the FDCPA, as enacted in 1977 (former section 803(6)(F)), providing that "debt collector" does not include "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client," was repealed by Pub. L. 99-361, which became effective in July 1986. Therefore, an attorney who meets the definition set forth in section 803(6) is now covered by the FDCPA.

Section 803(7) defines "location information" as "a consumer's place of abode and his telephone number at such place, or his place of employment."

This definition includes only residence, home phone number, and place of employment. It does not cover work phone numbers, names of supervisors and their telephone numbers, salaries or dates of paydays.

Section 803(8) defines "state" as "any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing."

Section 804—Acquisition of Location Information

Section 804 requires a debt collector, when communicating with third parties for the purpose of acquiring information about the consumer's location to "(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;" (2) not refer to the debt, (3) usually make only a single contact with each third party, (4) not communicate by post card, (5) not indicate the collection nature of his business purpose in any written communication, and (6) limit communications to the consumer's attorney, where the collector knows of the attorney, unless the attorney fails to respond to the communication.

1. *General.* Although the FDCPA generally protects the consumer's privacy by limiting debt collector communications about personal affairs to third parties, it recognizes the need for some third party contact by collectors to seek the whereabouts of the consumer.

2. *Identification of debt collector (section 804(1)).* An individual employed by a debt collector seeking location information must identify himself, but must not identify his employer unless asked. When asked, however, he must give the true and full name of the employer, to comply with this provision and avoid a violation of § 807(14).

An individual debt collector may use an alias if it is used consistently and if it does not interfere with another party's ability to identify him (*e.g.*, the true identity can be ascertained by the employer).

3. *Referral to debt (section 804(2)).* A debt collector may not refer to the consumer's debt in any third party communication seeking location information, including those with other creditors.

4. *Reference to debt collector's business (section 804(5)).* A debt collector may not use his actual name in his letterhead or elsewhere in a written communication seeking location information, if the name indicates collection activity (such as a name containing the word "debt", "collector", or "collection"), except when the person contacted has expressly requested that the debt collector identify himself.

5. *Communication with consumer's attorney (section 804(6)).* Once a debt collector learns a consumer is represented by an attorney in connection with the debt, he must confine his request for location information to the attorney. (See also comments on section 805(a)(2)).

Section 805—Communication in Connection With Debt Collection

Section 805(a)—Communication with the consumer. Unless the consumer has consented or a court order permits, a debt collector may not communicate with a consumer to collect a debt (1) at any time or place which is unusual or known to be inconvenient to the consumer (8AM–9PM is presumed to be convenient), (2) where he knows the consumer is represented by an attorney with respect to the debt, unless the attorney fails to respond to the communication in a reasonable time period, or (3) at work if he knows the consumer's employer prohibits such contacts.

1. *Scope.* For purposes of this section, the term "communicate" is given its commonly accepted meaning. Thus, the section applies to contacts with the consumer related to the collection of the debt, whether or not the debt is specifically mentioned.

2. *Inconvenient or unusual times or places (section 805(a)(1)).* A debt collector may not call the consumer at any time, or on any particular day, if he has credible information (from the consumer or elsewhere) that it is inconvenient. If the debt collector does not have such information, a call on Sunday is not *per se* illegal.

3. *Consumer represented by attorney (section 805(a)(2)).* If a debt collector learns that a consumer is represented by an attorney in connection with the debt, even if not formally notified of this fact, the debt collector must contact only the attorney and must not contact the consumer.

A debt collector who knows a consumer is represented by counsel with respect to a debt is not required to assume similar representation on other debts; however, if a consumer notifies the debt collector that the attorney has been retained to represent him for other debts placed with the debt collector, the debt collector must deal only with that attorney with respect to such debts.

The creditor's knowledge that the consumer has an attorney is not automatically imputed to the debt collector.

4. *Calls at work (section 805(a)(3)).* A debt collector may not call the consumer at work if he has reason to know the employer forbids such communication (e.g., if the consumer has so informed the debt collector).

Section 805(b)—Communication with third parties. Unless the consumer consents, or a court order or section 804 permits, "or as reasonably necessary to effectuate a postjudgment judicial remedy," a debt collector "may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector."

1. *Consumer consent to the third party contact.* The consumer's consent need not be in writing. For example, if a third party volunteers that a consumer has authorized him to pay the consumer's account, the debt collector may normally presume the consumer's consent, and may accept the payment and provide a receipt to the party that makes the payment. However, consent may not be inferred only from a consumer's inaction when the debt collector requests such consent.

2. *Location information.* Although a debt collector's search for information concerning the consumer's location (provided in § 804) is expressly excepted from the ban on third party contacts, a debt collector may not call third parties under the pretense of gaining information already in his possession.

3. *Incidental contacts with telephone operator or telegraph clerk.* A debt collector may contact an employee of a telephone or telegraph company in order to contact the consumer, without violating the prohibition on communication to third parties, if the only information given is that necessary to enable the collector to transmit the message to, or make the contact with, the consumer.

4. *Accessibility by third party.* A debt collector may not send a written message that is easily accessible to third parties. For example, he may not use a computerized billing statement that can be seen on the envelope itself.

A debt collector may use an "in care of" letter only if the consumer lives at, or accepts mail at, the other party's address.

A debt collector does not violate this provision when an eavesdropper overhears a conversation with the consumer, unless the debt collector has reason to anticipate the conversation will be overhead.

5. *Non-excepted parties.* A debt collector may discuss the debt only with the parties specified in this section (consumer, creditor, a party's attorney, or credit bureau). For example, unless the consumer has authorized the communication, a collector may not discuss the debt (such as a dishonored check) with a bank, or make a report on a consumer to a non-profit counseling service.

6. *Judicial remedy.* The words "as reasonably necessary to effectuate a postjudgment judicial remedy" mean a communication necessary for execution or enforcement of the remedy. A debt collector may not send a copy of the judgment to an employer, except as part of a formal service of papers to achieve a garnishment or other remedy.

7. *Audits or inquiries.* A debt collector may disclose his files to a government official or an auditor, to respond to an inquiry or conduct an audit, because the disclosure would not be "in connection with the collection of any debt."

8. *Communications by attorney debt collectors.* An attorney who represents either a creditor or debt collector that has previously tried to collect an account may communicate his efforts to collect the account to the debt collector. Because the section permits a debt collector to communicate with "the attorney of the creditor, or the attorney of the debt collector", communications between these parties (even if the attorney is also a debt collector) are not forbidden.

An attorney may communicate with a potential witness in connection with a lawsuit he has filed (e.g., in order to establish the existence of a debt), because the section was not intended to prohibit communications by attorneys that are necessary to conduct lawsuits on behalf of their clients.

Section 805(c)—Ceasing communication. Once a debt collector receives written notice from a consumer that he or she refuses to pay the debt or wants the collector to stop further collection efforts, the debt collector must cease any further communication with the consumer except "(1) to advise the consumer that the debt collector's further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy."

1. *Scope.* For purposes of this section, the term "communicate" is given its commonly accepted meaning. Thus, the section applies to any contact with the consumer related to the collection of the debt, whether or not the debt is specifically mentioned.

2. *Request for payment.* A debt collector's response to a "cease communication" notice from the consumer may not include a demand for payment, but is limited to the three statutory exceptions.

Section 805(d)—"consumer" definition. For section 805 purposes, the term "consumer" includes the "consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."

1. *Broad "consumer" definition.* Because of the broad statutory definition of "consumer" for the purposes of this section, many of its protections extend to parties close to the consumer. For example, the debt collector may not call the consumer's spouse at a time or place known to be inconvenient to the spouse. Conversely, he may call the spouse (guardian, executor, etc.) at any time or place that would be in accord with the limitations of section 805(a).

Section 806—Harassment or Abuse

Section 806 prohibits a debt collector from any conduct that would "Harass, oppress, or abuse any person in connection with the collection of a debt." It provides six examples of harassement or abuse.

1. *Scope.* Prohibited actions are not limited to the six subsections listed as

examples of activities that violate this provision.

2. *Unnecessary calls to third parties.* A debt collector may not leave telephone messages with neighbors when the debt collector knows the consumer's name and telephone number and could have reached him directly.

3. *Multiple contacts with consumer.* A debt collector may not engage in repeated personal contacts with a consumer with such frequency as to harass him. Subsection (5) deals specifically with harassment by multiple phone calls.

4. *Abusive conduct.* A debt collector may not pose a lengthy series of questions or comments to the consumer without giving the consumer a chance to reply. Subsection (2) deals specifically with harassment involving obscene, profane, or abusive language.

Section 806(1) prohibits the "use or threat of use of violence or other criminal means to harm * * * any person."

1. *Implied threat.* A debt collector may violate this section by an implied threat of violence. For example, a debt collector may not pressure a consumer with statements such as "We're not playing around here—we can play tough" or "We're going to send somebody to collect for us one way or the other."

Section 806(2) prohibits the use of obscene, profane, or abusive language.

1. *Abusive language.* Abusive language includes religious slurs, profanity, obscenity, calling the consumer a liar or a deadbeat, and the use of racial or sexual epithets.

Section 806(3) prohibits the "publication of a list of consumers who allegedly refuse to pay debts," except to report the items to a "consumer reporting agency", as defined in the Fair Credit Reporting Act or to a party otherwise authorized to receive it under that Act.

Section 806(4) prohibits the "advertisement for sale of any debt to coerce payment of the debt."

1. *Shaming prohibited.* These provisions are designed to prohibit debt collectors from "shaming" a customer into payment, by publicizing the debt.

2. *Exchange of lists.* Debt collectors may not exchange lists of consumers who allegedly refuse to pay their debts.

3. *Information to creditor subscribers.* A debt collector may not distribute a list of alleged debtors to its creditor subscribers.

4. *Coded lists.* A debt collector that publishes a list of consumers who have had bad debts, coded to avoid generally disclosing the consumer's identity (e.g., showing only the drivers license number and first three letters of each consumer's name) does not violate this provision, because such publication is permitted under the Fair Credit Reporting Act.

5. *List for use by investigator.* A debtor collector does not violate these provisions by providing a list of consumers against whom judgments have been entered to a private investigator in order to locate such individuals, because section 805(b) specifically permits contacts "reasonably necessary to effectuate a post-judgment judicial remedy."

6. *Public notice required by law.* A debt collector does not violate these provisions by providing public notices that are required by law as a prerequisite to enforcement of a security interest in connection with a debt.

Section 806(5) prohibits contacting the consumer by telephone "repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number."

1. *Multiple phone calls.* "Continuously" means making a series of telephone calls, one right after the other. "Repeatedly" means calling with excessive frequency under the circumstances.

Section 806(6) prohibits, except where section 804 applies, "the placement of telephone calls without meaningful disclosure of the caller's identity."

1. *Aliases.* A debt collector employee's use of an alias that permits identification of the debt collector (*i.e.*, where he uses the alias consistently, and his true identity can be ascertained by the employer) constitutes a "meaningful disclosure of the caller's identity."

2. *Identification of caller.* An individual debt collector must disclose his employer's identity, when discussing the debt on the telephone with consumers or third parties permitted by section 805(b).

3. *Relation to other sections.* A debt collector who uses a false business name in a phone call to conceal his identity violates section 807(14), as well as this section.

Section 807—False or Misleading Representations

Section 807 prohibits a debt collector from using any "false, deceptive, or misleading representation or means in connection with the collection of any debt." It provides sixteen examples of false or misleading representations.

1. *Scope.* Prohibited actions are not limited to the sixteen subsections listed as examples of activities that violate this provision. In addition, section 807(10), which prohibits the "use of any false representation or deceptive means" by a debt collector, is particularly broad and encompasses virtually every violation, including those not covered by the other subsections.

Section 807(1) prohibits "the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State * * *"

1. *Symbol on dunning notice.* A debt collector may not use a symbol in correspondence that makes him appear to be a government official. For example, a collection letter depicting a police badge, a judge, or the scales of justice, normally violates this section.

Section 807(2) prohibits falsely representing either "(A) the character, amount, or legal status of any debt; or (B) any services rendered or compensation which may be lawfully received by" the collector.

1. *Legal Status of debt.* A debt collector may not falsely imply that legal action has begun.

2. *Amount of debt.* A debt collector may not claim an amount more than actually owed, or falsely assert that the debt has matured or that it is immediately due and payable, when it is not.

3. *Judgment.* When a debt collector provides the validation notice required by section 809(a)(4), the notice may include the words "copy of a judgment" whether or not a judgment exists, because section 809(a)(4) provides for a statement including these words. Compliance with section 809(a)(4) in this manner will not be considered a violation of section 807(2)(A).

Section 807(3) prohibits falsely representing or implying that "any individual is an attorney or that any communication is from an attorney."

1. *Form of legal correspondence.* A debt collector may not send a collection letter from a "Pre-Legal Department," where no legal department exists. An attorney may use a computer service to send letters on his own behalf, but a debt collector may not send a computer-generated letter deceptively using an attorney's name.

2. *Named individual.* A debt collector may not falsely represent that a person named in a letter is his attorney.

3. *Relation to other sections.* If a creditor falsely uses an attorney's name rather than his own in his collection communications, he both loses his exemption from the FDCPA's definition of "debt collector" (Section 803(6)) and violates this provision.

Section 807(4) prohibits falsely representing or implying to the consumer that nonpayment "will result in the arrest or imprisonment of any

person or the seizure, garnishment, attachment, or sale of any property or wages of any person * * *"

Section 807(5) prohibits the "threat to take any action that cannot legally be taken or that is not intended to be taken."

1. *Debt collector's statement of his own definite action.* A debt collector may not state that he will take any action unless he intends to take the action when the statement is made, or ordinarily takes the action in similar circumstances.

2. *Debt collector's statement of definite action by third party.* A debt collector may not state that a third party will take any action unless he has reason to believe, at the time the statement is made, that such action will be taken.

3. *Statement of possible action.* A debt collector may not state or imply that he or any third party may take any action unless such action is legal and there is a reasonable likelihood, at the time the statement is made, that such action will be taken. A debt collector may state that certain action is possible, if it is true that such action is legal and is frequently taken by the collector or creditor with respect to similar debts; however, if the debt collector has reason to know there are facts that make the action unlikely in the particular case, a statement that the action was possible would be misleading.

4. *Threat of criminal action.* A debt collector may not threaten to report a dishonored check or other fact to the police, unless he actually intends to take this action.

5. *Threat of attachment.* A debt collector may not threaten to attach a consumer's tax refund, when he has no authority to do so.

6. *Threat of legal or other action.* Section 807(5) refers not only to a false threat of legal action, but also a false threat by a debt collector that he will report a debt to a credit bureau, assess a collection fee, or undertake any other action if the debt is not paid. A debt collector may also not misrepresent the imminence of such action.

A debt collector's implication, as well as a direct statement, of planned legal action may be an unlawful deception. For example, reference to an attorney or to legal proceedings may mislead the debtor as to the likelihood or imminence of legal action.

A debt collector's statement that legal action has been recommended is a representation that legal action may be taken, since such a recommendation implies that the creditor will act on it at least some of the time.

Lack of intent may be inferred when the amount of the debt is so small as to make the action totally unfeasible or when the debt collector is unable to take the action because the creditor has not authorized him to do so.

7. *Illegality of threatened act.* A debt collector may not threaten that he will illegally contact an employer, or other third party, or take some other "action that cannot legally be taken" (such as advising the creditor to sue where such advice would violate state rules governing the unauthorized practice of law). If state law forbids a debt collector from suing in his own name (or from doing so without first obtaining a formal assignment and that has not been done), the debt collector may not represent that he will sue in that state.

Section 807(6) prohibits falsely representing or implying that a transfer of the debt will cause the consumer to (A) lose any claim or defense, or (B) become subject to any practice prohibited by the FDCPA.

1. *Referral to creditor.* A debt collector may not falsely state that the consumer's account will be referred back to the original creditor, who would take action the FDCPA prohibits the debt collector to take.

Section 807(7) prohibits falsely representing or implying that the "consumer committed any crime or other conduct in order to disgrace the consumer."

1. *False allegation of fraud.* A debt collector may not falsely allege that the consumer has committed fraud.

2. *Misrepresentation of criminal law.* A debt collector may not make a misleading statement of law, falsely implying that the consumer has committed a crime, or mischaracterize what constitutes an offense by misstating or omitting significant elements of the offense. For example, a debt collector may not tell the consumer that he has committed a crime by issuing a check that is dishonored, when the statute applies only where there is a "scheme to defraud."

Section 807(8) prohibits "Communicating or threatening to communicate to any person (false) credit information * * *, including the failure to communicate that a disputed debt is disputed."

1. *Disputed debt.* If a debt collector knows that a debt is disputed by the consumer, either from receipt of written notice (section 809) or other means, and reports it to a credit bureau, he must report it as diputed.

2. *Post-report dispute.* When a debt collector learns of a dispute after reporting the debt to a credit bureau, the dispute need not also be reported.

Section 807(9) prohibits the use of any document designed to falsely imply that it issued from a state or federal source, or "which creates a false impression as to its source, authorization, or approval."

1. *Relation to other sections.* Most of the violations of this section involve simulated legal process, which is more specifically covered by section 807(13). However, this subsection is broader in that it also covers documents that fraudulently appear to be official government documents, or otherwise mislead the recipient as to their authorship.

Section 807(10) prohibits the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer."

1. *Relation to other sections.* The prohibition is so comprehensive that violation of any part of section 807 will usually also violate subsection (10). Actions that violate more specific provisions are discussed in those sections.

2. *Communication format.* A debt collector may not communicate by a format or envelope that misrepresents the nature, purpose, or urgency of the message. It is a violation to send any communication that conveys to the consumer a false sense of urgency. However, it is usually permissible to send a letter generated by a machine, such as a computer or other printing device. A bona fide contest entry form, which provides a clearly optional location to enter employment information, enclosed with request for payment, is not deceptive.

3. *False statement or implications.* A debt collector may not falsely state or imply that a consumer is required to assign his wages to his creditor when he is not, that the debt collector has counseled the creditor to sue when he has not, that adverse credit information has been entered on the consumer's credit record when it has not, that the entire amount is due when it is not, or that he cannot accept partial payments when in fact he is authorized to accept them.

4. *Misrepresentation of law.* A debt collector may not mislead the consumer as to the legal consequences of the consumer's actions (*e.g.*, by falsely implying that a failure to respond is an admission of liability).

A debt collector may not state that federal law requires a notice of the debt collector's intent to contact third parties.

5. *Misleading letterhead.* A debt collector's employee who is an attorney may not use "attorney-at-law"

stationery without referring to his employer, so as to falsely imply to the consumer that the debt collector had retained a private attorney to bring suit on the account.

Section 807(11) requires the debt collector to "disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose", except where section 804 provides otherwise.

1. *Oral communications.* A debt collector must make the required disclosures in both oral and written communications.

2. *Disclosure to consumers.* When a debt collector contacts a consumer and clearly discloses that he is seeking payment of a debt, he need not state that all information will be used to collect a debt, since that should be apparent to the consumer. The debt collector need not repeat the required disclosure in subsequent contacts.

A debt collector may not send the consumer a note saying only "please call me right away" unless there has been prior contact between the parties and the collector is thus known to the consumer.

3. *Disclosures to third parties.* Except when seeking location information, the debt collector must state in the first communication with a third party that he is attempting to collect the debt and that information will be used for that purpose, but need not do so in subsequent communications with that party.

Section 807(12) prohibits falsely representing or implying that "accounts have been turned over to innocent purchasers for value."

1. *Relation to other sections.* Section 807(6)(A) prohibits a false statement or implication that threatening to affect the consumer's rights may be affected by transferring the account; this subsection forbids falsely stating or implying that a transfer to certain parties has occurred.

Section 807(13) prohibits falsely representing or implying that "documents are legal process."

1. *Simulated legal process.* A debt collector may not send written communications that deceptively resemble legal process forms. He may not send a form or a dunning letter that, taken as a whole, appears to simulate legal process. However, one legal phrase (such as "notice of legal action" or "show just cause why") alone will not result in a violation of this section unless it contributes to an erroneous impression that the document is a legal form.

Section 807(14) prohibits the "use of any business, company, or organization name other than the (collector's) true name".

1. *Permissible business name.* A debt collector may use a name that does not misrepresent his identity or deceive the consumer. Thus, a collector may use its full business name, the name under which it usually transacts business, or a commonly-used acronym. When the collector uses multiple names in its various affairs, it does not violate this subsection if it consistently uses the same name when dealing with a particular consumer.

2. *Creditor misrepresentation of identity.* A creditor may not use any name that would falsely imply that a third party is involved in the collection. The in-house collection unit of "ABC Corp." may use the name "ABC Collection Division," but not the name "XYZ Collection Agency" or some other unrelated name.

A creditor violates this section if he uses the name of a collection bureau as a conduit for a collection process that the creditor controls in collecting his own accounts. Similarly, a creditor may not use a fictitious name or letterhead, or a "post office box address" name that implies someone else is collecting his debts.

A creditor does not violate this provision where an affiliated (and differently named) debt collector undertakes collection activity, if the debt collector does business separately from the creditor (e.g., where the debt collector in fact has other clients that he treats similarly to the creditor, has his own employees, deals at arms length with the creditor, and controls the process himself).

3. *All collection activities covered.* A debt collection business must use its real business name, commonly-used name, or acronym in both written and oral communications.

4. *Relation to other sections.* If a creditor uses a false business name, he both loses his exemption from the FDCPA's definition of "debt collector" (section 803(6)) and violates this provision. If a debt collector falsely uses the name of an attorney rather than his true business name, he violates section 807(3) as well as this section. When a debt collector uses a false business name in a phone call, he violates section 806(6) as well as this section.

When using the mails to obtain location information, a debt collector may not (unless expressly requested by the recipient to identify the firm) use a name that indicates he is in the debt collection business, or he will violate section 804(5). When a debt collector's employee who is seeking location information replies to an inquiry about his employer's identity under section 804(1), he must give the true name of his employer.

Section 807(15) prohibits falsely representing or implying that documents are not legal process forms or do not require action by the consumer.

1. *Disguised legal process.* A debt collector may not deceive a consumer into failing to respond to legal process by concealing the import of the papers, thereby subjecting the consumer to a default judgment.

Section 807(16) prohibits falsely representing or implying that a debt collector operates or is employed by a "consumer reporting agency" as defined in the Fair Credit Reporting Act.

1. *Dual agencies.* The FDCPA does not prohibit a debt collector from operating a consumer reporting agency.

2. *Misleading names.* Only a bona fide consumer reporting agency may use names such as "Credit Bureau," "Credit Bureau Collection Agency," "General Credit Control," "Credit Bureau Rating, Inc.," or "National Debtors Rating." A debt collector's disclaimer in the text of a letter that the debt collector is not affiliated with (or employed by) a consumer reporting agency, will not necessarily avoid a violation if the collector uses a name that indicates otherwise.

3. *Factual issue.* Whether a debt collector that has called itself a credit bureau actually qualifies as such is a factual issue, to be decided according to the debt collector's actual operation.

Section 808—Unfair Practices

Section 808 prohibits a debt collector from using "unfair or unconscionable means" in his debt collection activity. It provides eight examples of unfair practices.

1. *Scope.* Prohibited actions are not limited to the eight subsections listed as examples of activities that violate this provision.

2. *Elements of unfairness.* A debt collector's act in collecting a debt may be "unfair" if it causes injury to the consumer that is (1) substantial, (2) not outweighed by countervailing benefits to consumers or competition, and (3) not reasonably avoidable by the consumer.

Section 808(1) prohibits collecting any amount unless the amount is expressly authorized by the agreement creating the debt or is permitted by law.

1. *Kinds of amounts covered.* For purposes of this section, "amount" includes not only the debt, but also any incidental charges, such as collection

charges, interest, service charges, late fees, and bad check handling charges.

2. *Legality of charges.* A debt collector may attempt to collect a fee or charge in addition to the debt if either (a) the charge is expressly provided for in the contract creating the debt and the charge is not prohibited by state law, or (B) the contract is silent but the charge is otherwise expressly permitted by state law. Conversely, a debt collector may not collect an additional amount if either (A) state law expressly prohibits collection of the amount or (B) the contract does not provide for collection of the amount and state law is silent.

3. *Legality of fee under state law.* If state law permits collection of reasonable fees, the reasonableness (and consequential legality) of these fees is determined by state law.

4. *Agreement not in writing.* A debt collector may establish an "agreement" without a written contract. For example, he may collect a service charge on a dishonored check based on a posted sign on the merchant's premises allowing such a charge, if he can demonstrate that the consumer knew of the charge.

Section 808(2) prohibits accepting a check postdated by more than five days unless timely written notice is given to the consumer prior to deposit.

Section 808(3) prohibits soliciting any postdated check for purposes of threatening or instituting criminal prosecution.

Section 808(4) prohibits depositing a postdated check prior to its date.

1. *Postdated checks.* These provisions do not totally prohibit debt collectors from accepting postdated checks from consumers, but rather prohibit debt collectors from misusing such instruments.

Section 808(5) prohibits causing any person to incur telephone or telegram charges by concealing the true purpose of the communication.

1. *Long distance calls to the debt collector.* A debt collector may not call the consumer collect or ask a consumer to call him long distance without disclosing the debt collector's identity and the communication's purpose.

2. *Relation to other section.* A debt collector who conceals his purpose in asking consumers to call long distance may also violate section 807(11), which requires the debt collector to disclose his purpose in some communications.

Section 808(6) prohibits taking nonjudicial action to enforce a security interest on property, or threatening to do so, where (A) there is not present right to the collateral, (B) there is no present intent to exercise such rights, or (C) the property is exempt by law.

1. *Security enforcers.* Because the FDCPA's definition of "debt collection" includes parties whose principal business is enforcing security interests only for section 808(6) purposes, such parties (if they do not otherwise fall within the definition) are subject only to this provision and not to the rest of the FDCPA.

Section 808(7) prohibits "Communicating with a consumer regarding a debt by post card."

1. *Debt.* A debt collector does not violate this section if he sends a post card to a consumer that does not communicate the existence of the debt. However, if he had not previously disclosed that he is attempting to collect a debt, he would violate section 807(11), which requires this disclosure.

Section 808(8) prohibits showing anything other than the debt collector's address, on any envelope in any written communication to the consumer, except that a debt collector may use his business name if it does not indicate that he is in the debt collection business.

1. *Business names prohibited on envelopes.* A debt collector may not put on his envelope any business name with "debt" or "collector" in it, or any other name that indicates he is in the debt collection business. A debt collector may not use the American Collectors Association logo on an envelope.

2. *Collector's name.* Whether a debt collector/consumer reporting agency's use of his own "credit bureau" or other name indicates that he is in the collection business, and thus violates the section, is a factual issue to be determined in each individual case.

3. *Harmless words or symbols.* A debt collector does not violate this section by using an envelope printed with words or notations that do not suggest the purpose of the communication. For example, a collector may communicate via an actual telegram or similar service that uses a Western Union (or other provider) logo and the word "telegram" (or similar word) on the envelope, or a letter with the word "Personal" or "Confidential" on the envelope.

4. *Transparent envelopes.* A debt collector may not use a transparent envelope, which reveals language or symbols indicating his debt collection business, because it is the equivalent of putting information on an envelope.

Section 809—Validation of Debts

Section 809(a) requires a collector, within 5 days of the first communication, to provide the consumer a written notice (if not provided in that communication) containing (1) the amount of the debt and (2) the name of the creditor, along with a statement that he will (3) assume the debt's validity unless the consumer disputes it within 30 days, (4) send a verification or copy of the judgment if the consumer timely disputes the debt, and (5) identify the original creditor upon written request.

1. *Who must provide notice.* If the employer debt collection agency gives the required notice, employee debt collectors need not also provide it. A debt collector's agent may give the notice, as long as it is clear that the information is being provided on behalf of the debt collector.

2. *Single notice required.* The debt collector is not required to provide more than one notice for each debt. A notice need not offer to identify the original creditor unless the name and address of the original creditor are different from the current creditor.

3. *Form of notices.* The FDCPA imposes no requirements as to the form, sequence, location, or typesize of the notice. However, an illegible notice does not comply with this provision.

4. *Alternate terminology.* A debt collector may condense and combine the required disclosures, as long as he provides all required information.

5. *Oral notice.* If a debt collector's first communication with the consumer is oral, he may make the disclosures orally at that time in which case he need not send a written notice.

6. *Legal action.* A debt collector's institution of formal legal action against a consumer (including the filing of a complaint or service of legal papers by an attorney in connection with a lawsuit to collect a debt) or transmission of a notice to a consumer that is required by law as a prerequisite to enforcing a contractual obligation is not a "communication in connection with collection of any debt," and thus does not confer section 809 notice-and-validation rights on the consumer.

7. *Collection activities by attorneys.* An attorney who regularly attempts to collect debts by means other than litigation, such as writing the consumer demand letters (dunning notices) or calling the consumer on the phone about the obligation (except in response to a consumer's call to him after suit has been commenced), must provide the required notice, even if a previous debt collector (or creditor) has given such a notice.

8. *Effect of including proof with first notice.* A debt collector must verify a disputed debt even if he has included proof of the debt with the first communication, because the section is intended to assist the consumer when a debt collector inadvertently contacts the

wrong consumer at the start of his collection efforts.

Section 809(b) requires that, if the consumer disputes the debt or requests identification of the original creditor in writing, the collector must cease collection efforts until he verifies the debt and mails a response. Section 809(c) states that a consumer's failure to dispute the validity of a debt under this section may not be interpreted by a court as an admission of liability.

1. *Pre-notice collection.* A debt collector need not cease normal collection activities within the consumer's 30-day period to give notice of a dispute until he receives a notice from the consumer. An attorney debt collector may take legal action within 30 days of sending the notice, regardless of whether the consumer disputes the debt. If the consumer disputes the debt, the attorney may still take legal action but must cease collection efforts until verification is obtained and mailed to the consumer.

A debt collector may report a debt to a credit bureau within the 30-day notice period, before he receives a request for validation or a dispute notice from the consumer.

Section 810—Multiple Debts

Section 810 provides: "If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector my not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions."

Section 811—Legal Actions by Debt Collectors

Section 811 provides that a debt collector may sue a consumer only in the judicial district where the consumer resides or signed the contract sued upon, except that an action to enforce a security interest in real property which secures the obligation must be brought where the property is located.

1. *Waiver.* Any waiver by the consumer must be provided directly to the debt collector (not to the creditor in the contract establishing the debt), because the forum restriction applies to actions brought by the debt collector.

2. *Multiple defendants.* Since a debt collector may sue only where the consumer (1) lives or (2) signed the contract, the collector may not join an ex-husband as a defendant to a suit against the ex-wife in the district of her residence, unless he also lives there or signed the contract there. The existence of community property at her residence that is available to pay his debts does not alter the forum limitations on individual consumers.

3. *Real estate security.* A debt collector may sue based on the location of a consumer's real property only when he seeks to enforce an interest in such property that secures the debts.

4. *Services without written contract.* Where services were provided pursuant to an oral agreement, the debt collector may sue only where the consumer resides. He may not sue where services were performed (if that is different from the consumer's residence), because that is not included as permissible forum location by this provision.

5. *Enforcement of judgments.* If a judgment is obtained in a forum that satisfies the requirements of this section, it may be enforced in another jurisdiction, because the consumer previously has had the opportunity to defend the original action in a convenient forum.

6. *Scope.* This provision applies to lawsuits brought by a debt collector, including an attorney debt collector, when the debt collector is acting on his own behalf or on behalf of his client.

Section 812—Furnishing Certain Deceptive Forms

Section 812 prohibits any party from designing and furnishing forms, knowing they are or will be used to deceive a consumer to believe that someone other than his creditor is collecting the debt, and imposes FDCPA civil liability on parties who supply such forms.

1. *Practice prohibited.* This section prohibits the practice of selling to creditors dunning letters that falsely imply that a debt collector is participating in collection of the debt, when in fact only the creditor is collecting.

2. *Coverage.* This section applies to anyone who designs, complies, or furnishes the forms prohibited by this section.

3. *Pre-collection letters.* A form seller may not furnish a creditor with (1) a letter on a collector's letterhead to be used when the collector is not involved in collecting the creditor's debts, or (2) a letter indicating "copy to (the collector)" if the collector is not participating in collecting the creditor's debt. A form seller may not avoid liability by including a statement in the text of a form letter that the sender has not yet been assigned the account for collection, if the communication as a whole, using the collector's letterhead, represents otherwise.

4. *Knowledge required.* A party does not violate this provision unless he knows or should have known that his form letter will be used to mislead consumers into believing that someone other than the creditor is involved in collecting the debt.

5. *Participation by debt collector.* A debt collector that uses letters as his only collection tool does not violate this section, merely because he charges a flat rate per letter, if he is meaningfully "participating in the collection of a debt." The consumer is not misled in such cases, as he would be in the case of a party who supplied the creditor with form letters and provided little or no additional service in the collection process. The performance of other tasks associated with collection (*e.g.*, handling verification requests, negotiating payment arrangements, keeping individual records) is evidence that such a party is "participating in the collection."

Section 813—Civil Liability

Section 813 (A) imposes civil liability in the form of (1) actual damages, (2) discretionary penalties, and (3) costs and attorney's fees, (B) discusses relevant factors a court should consider in assessing damages, (C) exculpates a collector who maintains reasonable procedures from liability for an unintentional error, (D) permits actions to be brought in federal or state courts within one year from the violation, and (E) shields a defendant who relies on an advisory opinion of the Commission.

1. *Employee liability.* Since the employees of a debt collection agency are "debt collectors," they are liable for violations to the same extent as the agency.

2. *Damages.* The courts have awarded "actual damages" for FDCPA violations that were not just out-of-pocket expenses, but included damages for personal humiliation, embarrassment, mental anguish, or emotional distress.

3. *Application of statute of limitation period.* The section's one year statute of limitations applies only to private lawsuits, not to actions brought by a government agency.

4. *Advisory opinions.* A party may act in reliance on a formal advisory opinion of the Commission pursuant to 16 CFR 1.1–1.4, without risk of civil liability. This protection does not extend to reliance on this Commentary or other informal staff interpretations.

Section 814—Administrative Enforcement

Section 814 provides that the principal

federal enforcement agency for the FDCPA is the Federal Trade Commission, but assigns enforcement power to other authorities empowered by certain federal statutes to regulate financial, agricultural, and transportation activities, where FDCPA violations relate to acts subject to those laws.

Section 815—Reports to Congress by Commission

Section 815 requires the Commission to submit an annual report to Congress which discusses its enforcement and other activities administering the FDCPA, assesses the degree of compliance, and makes recommendations.

Section 816—Relations to State Laws

Section 816 provides that the FDCPA pre-empts state laws only to the extent that those laws are inconsistent with any provision of the FDCPA, and then only to the extent of the inconsistency. A State law is not inconsistent if it gives consumers greater protection than the FDCPA.

1. *Inconsistent laws.* Where a state law provides protection to the consumer equal to, or greater than, the FDCPA, it is not pre-empted by the federal statute.

Section 817—Exemption For State Regulation

Section 817 orders the Commission to exempt any class of debt collection practices from the FDCPA within any State if it determines that State laws regulating those practices are substantially similar to the FDCPA, and contain adequate provision for enforcement.

1. *State exemptions.* A state with a debt collection law may apply to the Commission for an exemption. The Commission must grant the exemption if the state's law is substantially similar to the FDCPA, and there is adequate provision for enforcement. The Commission has published procedures for processing such applications (16 CFR 901).

Section 818—Effective Date

Section 818 provides that the FDCPA took effect six months from the date of its enactment.

1. *Key dates.* The FDCPA was approved September 20, 1977, and became effective March 20, 1978.

[FR Doc. 88-28573 Filed 12-12-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Initial Review Committees and Science Advisory Board; Meeting Agendas; January

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth schedules and proposed agendas of the forthcoming meetings of the agency's initial review committees and a science advisory board in the month of January 1989.

The Extramural Science Advisory Board, NIMH, will discuss the peer review process and the extramural program in the behavioral sciences of the National Institute of Mental Health.

The review committees will be performing initial review of applications for Federal assistance. Therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b) (6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIHM.

Date and Time: January 18-20: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: Open—January 18: 9:00-10:00 a.m., Closed—Otherwise.

Contact: Maureen Eister, Parkland Building, Room 9C-08, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1340.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Extramural Science Advisory Board, NIMH.

Date and Time: January 22-24: 10:00 a.m.

Place: January 22—Bethesda Marriott, 5151 Pooks Hills Road, Bethesda, Maryland 20814.

January 23-24—National Institutes of Health, Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open.

Contact: Anthony Pollitt, Parklawn Building, Room 17C-20, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3175.

Purpose: The Extramural Science Advisory Board, NIMH, advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: January 25-27: 9:00 a.m.

Place: Congressional Days Inn, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—January 25: 9:00-10:00 a.m., Closed—Otherwise.

Contact: Emilie A. Embrey, Parklawn Building, Room 9C-08, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1340.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Date: December 7, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-28656 Filed 12-12-88; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88N-0415]

Drug Export; Ifex (Ifosfamide) For Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.